

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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|--|---|--------------------------------------|
| <b>DARWIN LESHER,</b>  | : | <b>CIVIL ACTION NO. 1:09-CV-0444</b> |
|  | : |                                      |
| <b>Plaintiff</b>   | : | <b>(Judge Conner)</b>                |
|  | : |                                      |
| <b>v.</b>  | : |                                      |
|  | : |                                      |
| <b>LAW OFFICES OF MITCHELL N.<br/>KAY, P.C. and MITCHELL N. KAY,</b> | : |                                      |
|  | : |                                      |
| <b>Defendants</b>  | : |                                      |

**ORDER**

AND NOW, this 13th day of March, 2009, upon consideration of the notice of removal (Doc. 1) of the above-captioned matter from the Court of Common Pleas of Cumberland County, and of the facsimile received from plaintiff's counsel on March 12, 2009, and it appearing that plaintiff filed a praecipe to discontinue in the Court of Common Pleas at 11:37 a.m. on March 10, 2009,<sup>1</sup> and that defendant filed the notice of removal at 11:15 p.m. on the same date,<sup>2</sup> and the court concluding that plaintiff therefore dismissed the above-captioned matter prior to defendant's attempt to remove it, and that no controversy existed at the time defendant filed the notice of removal, it is hereby ORDERED that:

1. The above-captioned matter is DISMISSED without prejudice for lack of subject matter jurisdiction.

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<sup>1</sup>The praecipe is attached to the facsimile transmitted by plaintiff's counsel.

<sup>2</sup>The time stamp for the filing of the notice of removal appears in the court's initial electronic intake docket. (Doc. 258 in No. 3:02-AT-6000.)

2. The Clerk of Court is instructed to docket the facsimile received from plaintiff's counsel on March 12, 2009.
3. The Clerk of Court is instructed to CLOSE this case.

S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge